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APR 16 1985
ALEXANDER L. STEVAS,
CLERK

84-1720

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

NO. _____

CLARENCE H. HOLDING , PETITIONER

V.

SOVRAN BANK , EXECUTOR AND TRUSTEE UNDER THE WILL OF LILLIAN J. MUSE , DECEASED, RESPONDANT.

PETITION FOR WRIT OF CERTIORARI

CLARNECE H. HOLDING
1901 WOODBINE ROAD
RICHMOND , VIRGINIA
23225
804 232 7418

COUNSEL FOR PETITIONER

THOMAS S.WORD , JR
SCOTT S CAIRNS
1400 ROSS BUILDING
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COUNSEL FOR THE RESPONDANT

31pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. WHETHER THE SUPREME COURT OF VIRGINIA VIOLAT ED THE CONSTITUTIONAL RIGHTS OF THE PETITIONER BY DISMISSING HIS APPEAL FOR INADVERTENTLY FOR GETTING TO ATTACH A $25.00 CHECK FOR CLERK FIL ING FEE TO A TIMELY APPEAL BUT LATER SENT THE CHECK .

2. WHETHER THE SUPREME COURT OF VIRGINIA VIOLAT ED THE PETITIONER,S CONSTITUTIONAL RIGHTS GUAR ANTEED BY THE XIV AMENDMENT ...NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE , LIBERTY , OR PROPERTY WITHOUT DUE PROCESS OF LAW WHEN THEY DISMISSED THE APPEAL BECAUSE THE PETITIONER IN ADVERTLY FORGOT TO ATTACH A $25.00 FILING FEE.

3. WHETHER DISMISSING THE APPEAL FOR INADVERT ENTLY FORGETTING TO ATTACH A $25.00 CHECK FOR FILING FEE IS UNCONSTITUTIONAL .

4. WHETHER DISMISSING THE APPEAL FOR INADVERT ENTLY FORGETTING TO ATTACH A $25.00 CHECK CLERK FILING FEE VIOLATES THE XIII AMENDMENT_ SLAVERY AND INVOLUNTARY SERVITUDE BECAUSE THE APPELLANT COULD NOT EXERCISE HIS RIGHTS TO COLLECT FOR HIS WORK AND LABORS FOR 12 YEARS WORK AND SERVICES.

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IN THE

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OCTOBER TERM 1984

NO. _____

CLARENCE H. HOLDING , PETITIONER

V.

SOVRAN BANK , EXECUTOR AND TRUSTEE UNDER THE WILL OF LILLIAN J. MUSE , DECEASED, RESPONDANT.

PETITION FOR WRIT OF CERTIORARI

A PRELIMINARY STATEMENT

YOUR PETITIONER, CLARENCE H. HOLDING MOVES THIS COURT TO HEAR AND GRANT THIS WRIT OF CERT IORARI ON THE GROUNDS (1) HIS CONSTITUIONAL RIGHTS HAVE BEEN ABRIDGED AND VIOLATED BY THE ORDERS OF THE SUPREME COURT OF ,VIRGINIA AS GUARANTEED BY THE XIV AMENDMENT TO THE CONSTI TUTION OF THE UNITED STATES ... NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE , LIBERTY ,OR PROPERTY

WITHOUT DUE PROCESS OF LAW .... (2) ORDER DATED 12/6/1984 and ORDER DATED 1/18/1985 ARE UNCONST ITUTIONAL . (3) ORDERS VIOLATED 13th AMENDMENT- SLAVERY AND INVOLUNTARY SERVITUDE BY DENYING OR PREVENTIING A PERSON TO BE HEARD CONCERNING HIS RIGHTFUL COMPENSATION FOR 12 YEARS WORK . YOUR PETITIONER FILES THIS BRIEF IN SUPPORT THEREOF .

STATEMENT OF THE CASE

PETITIONER FILED AN APPEAL IN SUPREME COURT OF VIRGINIA FROM LOWER COURT CONCERNING A CONTRACT FOR SERVICES FOR 12 YEARS TO LILLIAN J. MUSE FOR AND IN CONSIDERATION FOR HIS SERVICES HE WOULD RECEIVE MUTUAL FINANCE CORPORATION FOR SUCH SER VICES . LILLIAN J. MUSE DIED ON AUGUST 13 , 1983 AND MUTUAL FINANCE CORPORATION WAS WORTH $550.000 .00 and YOUR PETITIONER DEMANDED FULFILLMENT OF THE CONTRACT . LOWER COURT HELD FOR RESPONDANT. PETITIONER FILED AN APPEAL IN SUPREME COURT OF VIRGINIA BUT INADVERTLY FAILED TO ATTACH A CLERK FILING FEE OF $25.00 . THE CLERK DID NOT NOTIFY THE APPELLANT HE HAD INADVERTENTLY FAILED TO ATTAC H A CHECK FOR $25.00 CLERK FILING FEE , BUT ON OCTOBER 29th , 1984 RETURNED THE PETITION FOR RE FILING UNDER RULE 1:16 REQUIRING ALL PLEADINGS TO

BE FILED ON PAGES 8 1/2 x 11 inches IN SIZE. NOTHING SAID ABOUT THE $25.00 FILING FEE.THE COURT ON DECEMBER 6, 1984 DISMISSED THE APPEAL CITING RULE 5.25 -FINDING NO FILING FEE WAS PAID. APPELLANT PETITIONED FOR REHEARING ATTACHED A CHECK FOR $25.00 FOR THE FILING FEE . THE COURT ON JANUARY 18 , 1985 DENIED THE PETITION . YOUR PETITIONER GAVE NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES . IT IS HERE ON A PETITION FOR WRIT OF CERTIORARI.

JURISDICTION STATEMENT

PART V JURISDICTION ON WRIT OF CERTIORARI. RULE 17 .1 (c) WHENA STATE COURT ON A FEDERAL COURT OF APPEALS HAS DECIDED AN IMPORTANT GUES TION OF FEDERAL LAW WGICH HAS NOT BEEN , BUT SH OULD BE , SETTLED BY THIS COURT , OR HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH A PPLICABLE DECISIONS OF THIS COURT .

2. ORDERS OF STATE COURT ARE UNCONSTITUTIONAL.

3. VIOLATED AND ABRIDGED THE CONSTITUTIONAL RIGHTS GUARANTEED BY THE XIV AMENDMENT TO THE UNITED STATES CONSTITUTION ... NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE , LIBERTY , OR

PROPERTY WITHOUT DUE PROCESS OF LAW.

4. VIOLATED THE THIRTEENTH AMENDMENT TO THE U.S. CONSTITUTION_ SLAVERY NOR INVOLUNTARY SERVITUDE.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT XIV ... NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE , LIBERTY , OR PROPERTY WITH OUT DUE PROCESS OF LAW .

AMENDMENT XIII _ SLAVERY NOR INVOLUNTARY SERVITU DE.

BOTH ORDERS ARE UNCONSTITUTIONAL .

REASONS FOR GRANTING THE WRIT OF CERTIORARI

THE CONSTITUTIONAL RIGHTS OF PETITIONER HAVE BEEN ABRIDGED AND VIOLATED BY THE SUPREME COURT OF VIRGINIA WHEN THEY DISMISSED HIS APPEAL BECAUSE HE INADVERTENTLY FORGOT TO ATTACH A CHECK FOR $25.00 CLERK FILING FEE. THE COURT VIOLATED HIS RIGHTS GUARANTEED BY THE XIV AMENDMENT TO THE U. S. CONSTITUTION... NOR SHALL ANY STATE DE PRIVE ANY PERSON OF LIFE, LIBERTY , OR PROPERTY WITHOUT DUE PROCESS OF LAW.

THE SUPREME COURT OF VIRGINIA 2 ORDERS ARE UN CONSTITUTIONAL . THE TWO ORDERS ALSO VIOLATED THE THIRTEENTH AMENDMENT _ SLAVERY AND INVOLUNT ARY SERVITUDE BECAUSE IT PREVENTED THE PETITIONER FROM COLLECTING

LECTING FOR 12 YEARS LABORS AND SERVICES WHICH AMOUNTS TO 12 YEARS SLAVERY AND INVOLUNTARY SER VITUDE WHICH COULD CAUSE HIM TO BECOME A WARD OF THE STATE OR COUNTRY IF YOU CAN NOT COLLECT FOR YOUR LABORS ESPECIALLY WHEN YOU ARE NEARLY 65 YEARS OLD BECAUSE AT 65 WITH HEART TROUBLE IT IS VERY DIFFICULT TO RECOUPE THE GREAT LOSS.

ARGUMENT

ARGUMENTS WILL BE GIVEN IN THE SUPREME COURT BEFORE THE CHIEF JUSTICE AND THE ASSOCIATES JUSTICES IN PERSON .

CONCLUSION

THE RECORD SPEAKS CLEARLY , VIVIDLY , HONESTLY RIGHTFULLY THE SUPREME COURT OF VIRGINIA WHEN IT DISMISSED AND FAILED TO HEAR THE PETITION FOR HEARING THE APPEAL OF THE PETITIONER BECAUSE HE INADVERTENTLY FORGOT TO ATTACH A $25.00 CHECK FOR CLERK FILING FEE ABRIDGED AND VIOLATED AND DENIED HIM HIS CONSTITUTIONAL RIGHTS AS GUARAN TEED BY XIV AMENDMENT TO THE UNITED STATES CONST ITUTION... NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE , LIBERTY , OR PROPERTY WITHOUT DUE PRO CESS OF LAW .

DUE PROCESS OF LAW NOW POSSESS THREE DISTINCT FACES (1) INCORPORATED DUE PROCESS (2) SHOCKED CONSCIENCE AND FUNDAMENTAL FAIRNESS DUE PROCESS (3) INTERFERENCE WITH A NEWLY EMANATED CONSTI TUTIONAL RIGHT DUE PROCESS .

THE RECORD CLEARLY SHOWS THE PETITIONER'S RIGHTS HAVE BEEN VIOLATED . THE SUPREME COURT ORDERS ARE DEFINITELY UNCONSTITUTIONAL .

THE SUPREME COURT OF VIRGINIA ORDERS AS SHOWN ABOVE DO VIOLATE THE XIII AMENDMENT TO THE UNIT ED STATES CONSTITUTION - SLAVERY AND INVOLUNTARY SERVITUDE WHEN THEY DENIED THE PETITIONER'S APPEAL PREVENTING HIM FROM COLLECTING FOR12 YEARS OF HARD LABOR AND SERVICS .

THEREFORE THIS COURT SHOULD HEAR THIS CASE SO THAT JUSTICE MAY BE DONE . PRAYER .

Clarence H. Holding

Respectfully SUBMITTED,

Clarence H. Holding

CLARENCE H. HOLDING ,
1901 Woodbine Road
RICHMOND , VIRGINIA 23225
804 232 7418
Counsel for PETITIONER

CERTIFICATE

I CERTIFY I SENT 3 COPIES PREPAID OF PETITION TO SCOTT CAIRNS, COUNSEL FOR RESPONDANT 1400 ROSS BUILDING, RICHMOND , VIRGINIA 23219;

Clarence H. Holding

APPENDIX

V I R G I N I A EXIBIT 1

IN THE SUPREME COURT OF VIRGINIA

CLARENCE H. HOLDING , APPELLANT VSC#841593
LC # A2646-C

V.

SOVRAN BANK , as EXECUTOR AND TRUSTEEOF
ESTATE OF LILLIAN J. MUSE , DECEASED,APPELLEE

NOTICE OF APPEAL

I, CLARENCE H. HOLDING DOETH HEREBY GIVE NOTICE OF APPEAL , by COUNSEL TO AN ORDER DATED JANUARY 18th, 1985 received on January 24, 1985. TO THE SUPREME COURT OF THE UNITED STATES , WASHINGTON , D. C. REQUEST THE CLERK FORWARD THE RECORD .

JANUARY31,1985 RESPECTFULLY SUBMITTED,
ORIGINAL SIGNED
CLARENCE H. HOLDING
COUNSEL FOR APPELLANT

CERTIFICATE

I , CLARENCE H. HOLDING , DOTH HEREBY CERTIFY I SENT A COPY OF APPEAL TO COUNSEL FOR APPELLEE, SCOTT S. CAIRNS 1400 ROSS BLDG , RICHMOND, VA. 23219; THOMAS AND BERTHA GALE, 3501 OLD GUN RD , MIDLOTHIAN , VA. 23113; JOAN MURPHY, COUNSEL FOR VIRGINIA MUSEUM ;JOHN W VAUGHAN , JR 600 E.Main St . Richmond , Va 23202.1/31/1985

CLARENC H. HOLDING,SIGNED
COUNSEL FOR APPELLANT

SUPREME COURT OF VIRGINIA EXIBIT 2

SUPREME COURT BUILDING

RICHMOND , VIRGINIA , 23219

OCTOBER 29, 1984

MR. CLARENCE H. HOLDING
1901 WOODBINE ROAD
RICHMOND , VIRGINIA 23225

Dear MR. HOLDING :

Re: CLARENC H. HOLDING
v. SOVRANK , ETC., ET AL.

RULE 1:16 requires all pleadings filed in a clerk,s office of a state court in Virginia to be on pages 8-1/2 by 11 inches in size. Accordingly , I am returning herewith your petition for appeal in this case for com pliance with that RULE. The Rule also re quires you to certify that tha substituted petition is identical in content to the petition initially filed .

Sincerely yours,

ALLEN L. LUCY

BY:
DAVID B. BELL
ORIGINAL SIGNED
DEPUTY CLERK

DBB: vlb

Enclosures

V I R G I N I A EXIBIT 3

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHM OND ON THURSDAY THE 6th DAY OF DECEMBER , 1984

CLARENCE H. HOLDING , APPELLANT,

AGAINST RECORD NO. 841593
CIRCUIT COURT NO. A-2246-C

SOVRAN BANK , AS EXECUTOR , ETC. , APPELLEE

FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND

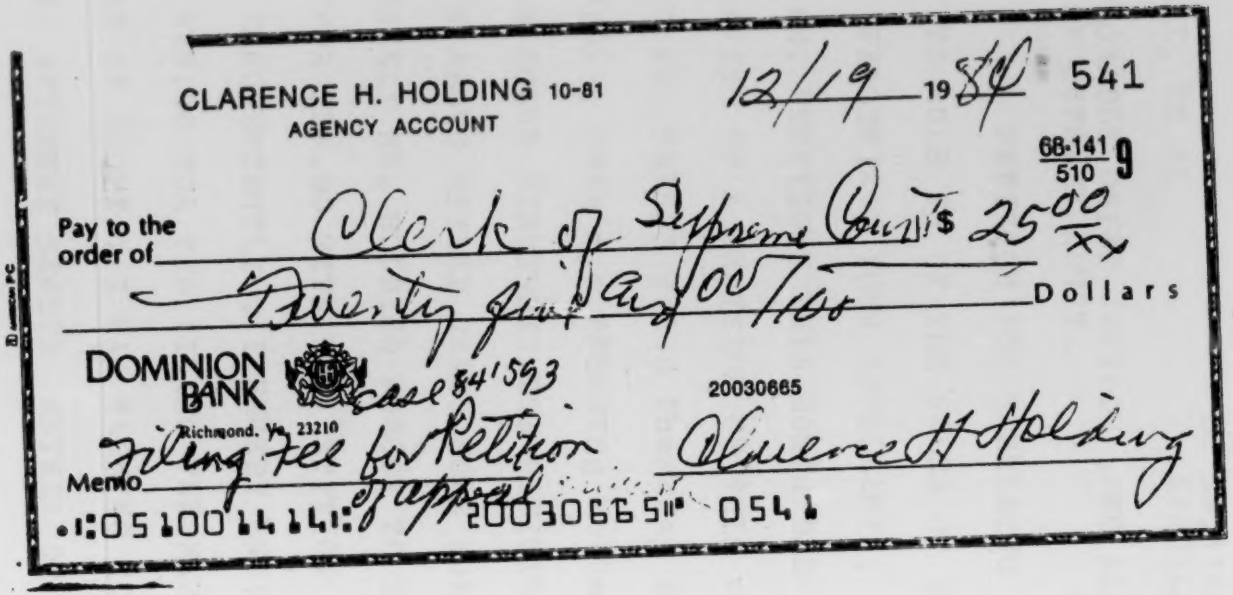
FINDING NO FILLING FEE WAS PAID, THE COURT DISMISSES THE PETITION FOR APPEAL IN THE ABOVE- STYLED CASE . RULE 5:25 .

A COPY,

TESTE:

DAVID B. BEACH,CLK

BY: PATRICIA G. DAVIS
ORIGNAL SIGNED
DEPUTY CLERK



CLARENCE H. HOLDING 10-81
AGENCY ACCOUNT

12/19 19 84 541

68-141
510 9

Pay to the order of Clerk of Supreme Court $ 25.00

Twenty five and 00/100 Dollars

DOMINION BANK
Richmond, Va. 23210

Case 841593

20030665

Memo Filing fee for Petition of Appeal

Clarence H Holding

⑆051001411⑆ 20030665⑈ 0541

12

EXIBIT 4

V I R G I N I A

EXIBIT 5

IN THE SUPREME COURT

CLARENCE H. HOLDING, ET AL APPELLANT

V.

RECORD 841593
LC No.A2646 C

SOVRAN BANK, ET AL APPELLEE

TO THE HONORABLE CHIEF JUSTICE ,AND ALL JUSTICES OF SUPREME COURT.

PETITION FOR REHEARING

PURSUANT TO RULE 29 OF THE RULES OF SUPREME COURT OF VIRGINIA , YOUR APPELLANT , CLARENCE H. HOLDING, PETITIONS THIS HONORABLE COURT FOR REHEARING OF A DECISION OF THIS COURT ON RECORD NO. 841593 dated Thursday 6th day OF DECEMBER , 1984 i,e "Finding No Fee WAS PAID, THE COURT DISMISSES THE PETITION FOR APPEAL IN ABOVE STYLED CASE. RULE 5:25". UNFORTUNATELY MR. HOLDING FORGOT TO ENCLOSE A CHECK FOR $25.00 WITH THE PETITION FOR FIL ING FEE INADVERTENTLY . I HEREBY ENCLOSE A CH ECK FOR $25.00 FOR THE FILING FEE MADE OUT TO THE CLERK OF COURT . I WAS TALKING TO GEORGE ALLEN JR. ATTORNEY SENOIR PARTNER OF LAW FI RM OF ALLEN ,ALLEN , ALLEN, ALLEN THE OTHER DAY AND HE SAYS HE FORGETSQUITE OFTEN AND HAS TO WRITE NOTES TO REMIND HIM OF DUTIES AND

AND THINGS THAT MUST BE DONE IN ACTIVITIES OF BUSINESS AND LIFE, ANOTHER FRIEND ARCHIE WELLS ATTORNEY OWNER OF THE LAW FIRM OF WELLS AND AS SOCIATES SAYS THE VERY SAME THIND HE FORGETS LIKE MOST PEOPLE TO SEND A CHECK FOR THIS OR THAT I KNOW ALL OF THE JUSTICES DO FORGET AT ONE TIME OR THE OTHER DO THE SAME THING. I AM HUMAN AND I FORGET.

THEREFORE I OBJECT TO THE DISMISSAL OF MY CASE AND APPEAL for NOT INCLUDING MY CHECK FOR$25. OO for FILING FEE FOR MY PETITION FOR APPEAL TO THE COURT .

THE JUSTICES ACTION DISMISSING MY PETITION FOR APPEAL VIOLATED MR. HOLDING,s CONSTITUTIONAL RIGHTS GUARANTEED BY DUE PROCESS OF XIV AMEND MENT TO THE U.S. CONSTITUTIONAND THE VIRGINIA CONSTITUTION AND ALSO TO GET A FAIR TRIAL AND A TRIAL BY JURY AND JUSTICE TO BE DONE. GREAT AND SUBSTANTIAL DAMAGES , INJURIES , LOSES OF CONSI DERABLE PROPERTY AND WEALTH WILL BE SUSTAINED AND SUFFERING .

FOR GOOD CAUSE AND TO ENABLE THE COURT TO ATTAIN THE ENDS OF JUSTICE EXCEPTIONS AND BENDING OF THE RULES ARE NECESSARY AND IN ORDER . REQUIRE

MENTS ARE NOT INFLEXIABLE AND MAY BE RELAXED TO ENA ENABLE THE SUPREME COURT TO ATTAIN THE ENDS OF JUSTICE AND WHAT IS RIGHT . CASES IN SUPPORT ARE SHOCKET V SIBERMAN 209 VA 490,165 SE ed 414 (1969). Witt V. Merriot 210 VA 70, 517 (1969).

MR. HOLDING APPEALED TO THE SUPREME COURT FOR A GOOD CAUSE AND TO ATTAIN THE ENDS OF JUSTICE. GREAT ABUSE AND INJUSTICE AND INJUSTICE WERE MWTERED OUT BY THE JUDGE IN THE LOWER COURT AS SET FORTH TO THE SUPREME COURT IN HIS PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS, THERE WERE NUMEROUS ACTS OF MISCARRIAGE OF JUSTICE IN THE LOWER COURT AND YOU HAVE COMPOUNDED IT BY US ING A MERE TECHNICALITY OF A $25.00 FILING FEE TO DISMISS MR. HOLDING,S PETITION FOR APPEAL WITHOUT CONSIDERING THE MERITE OF THE PETITION. TO DISMISS MR. HOLDING,S PETITION ON A MERE TECHNICALITY OF FAILING TO INCLUDE A $25.00 FILING F EE WILL ALLOW GREAT INJURIES, DAMGES, INJUSTICES, LOSS OF PROPERTY WORTH $550,000.00 or more THAT BELONGS TO MR. HOLDING FOR HIS SER VICES FOR THE LAST L@ YEARS WHICH IS RIGHTFULLY HIS PROPERTY .

CONDONING AND COMPOUNDING INJUSTICES OF THE LOWER COURT BY USING MERE INSIGNIFICANT TECH NICALITIES WHICH HAS NO BEARING ON THE CASE GIVES RISE TO THE NEED FOR THE COURTS EXIST ANCE OR NEED FOR IT . THE COURT EXIST FOR THE PEOPLE TO SERVE THE SAME AND SEE THAT JUSTICE WILL PREVAIL AND HAD .

I DID NOT FIGHT IN WORLD WAR II IN ENGLAND , FRANCE , AUSTRIA AND TO BE A CANDIDATE FOR THE CONGRESSIONAL MEDAL OF HONOR RO COME BACK TO SUCH INJUSTICES. ALL PERSONS GAVE OF THEM SELVES TO SECURE PEACE FREEDOM, AND DEMOCRACY FOR ALL AND THOSE WHO DIED SHOULD NOT HAVE DIED IN VAIN OR THE SUFFERING AND HARDSHIPS OF THOSE WHO MANAGED TO SURVIVE SHOULD NOT HAVE BEEN ENDURED IN VAIN .

I COULD GO ON NAMING THE NUMEROUS INJUSTICES IN OUR COURT SYSTEMS AND TOO MANY PEOPLE PROFIT FROM SUCH INJUSTICES AND NOT WILLING TO STEP A SIDE AND CORRECT THE SYSTEM BECAUSE THEY HAVE TOO MUCH TO LOSE. MANY YEARS HAVE AND WILL PASS BEFORE ANY SMALL CHANGE WILL COME TO BEING AND MANY WILL SUFFER IN THE INTERIUM .

WHEREFORE , YOUR APPELLANT , CLARENCE H. HOLDING

FOR THE ABOVE ENUMERATED GROUNDS , REASONS CAUSES DOES HEREBY FORTHWITH PRAY AND ASK THIS HONORABLE COURT TO SET ASIDE AND DIMISS YOUR ORDER OF DECEMBER 6th , 1984 and GRANT THE APPEAL TO ATTAIN THE ENDS OF JUSTICE AND JUSTICE MAY EXIST AND PREVAIL . THANK YOU .

RESPECTFULLY SUBMITTED,
ORIGINAL SIGNED
CLARENCE H. HOLDING
OF COUNSEL

CERTIFICATE

I CERTIFY I SENT POSTAGE PAID A COPY OF THE PETITION FOR REHEARING TO COUNSEL OF THE APPELLEE, THOMAS S WORD , JR., SCOT S CAIRNS 1400 Ross BLDG. RICHMOND , VA. 23219; THOMAS AND BERTHA GALE #%)L OLD GUN RD E MIDLOTHIAN VA. 23113, JOHN W. VAUGHAN , JR. 629 E Main ST RICHMOND , VA @#@)@ ; JOAN W MURPHY 101 N. 8th St, Richmond, Va. 23219.

ORIGINAL SIGNED
CLARENCE H. HOLDING
COUNSEL

VIRGINIA EXIBIT ¢

IN THE SUPREME COURT OF VIRGINA AT THE SUP REME COURT BUILDING IN THE CITY OF RICHMOND ON FRIDAY THE 18th DAY OF JANUARY , 1985.

CLARENCE H. HOLDING, APPELLANT,

AGAINST RECORD NO. 841593
CIRCUIT COURT NO. A-2246- C

SOVRAN BANK , AS EXECUTOR , ETC. ,APPELLEE

UPON A PETITION FOR REHEARING

ON CONSIDERATION OF THE PETITION OF APPELL ANT TO SET ASIDE THE JUDGMENT RENDERED HEREIN ON THE 6th DAY OF DECEMBER , 1984, AND GRANT A REHEARING THEREOF , THE PRAYER OF SAID PET ITION IS DENIED .

A COPY ,

TESTE:

Signed DAVIDB BEACH

CLERK

VIRGINIA EXIBIT 7

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND MANCHESTER COURTHOUSE the 23rd day of July 1984.

FIRST & MERCHANTS NATIONAL BANK AS EXECUTOR AND TRUSTEE UNDER WILL O LILLIAN J. MUSE, DECEASED PLANTIFF

DECREE

AGAINST (CHANCERY NO. A-2646C)

CLARENCE H. HOLDING, BERTHA GALE, THOMAS R. GALE, VIRGINA MUSEUM OF FINE ARTS AND TRUSTEES-OF ROANOKE COLLEGE, DEFENDANTS

THIS CAUSE , WHICH HAS BEEN REGULARLY MATURED, DOCKETED AND SET FOR HEARING AS TO ALL DEFEND ANTS, CAME ON JULY 11, 1984 TO BE HEARD, AND CAME THE PLANTIFF , FIRST AND MERCHANTS NAT ional Bank ,NOW KNOWN AS SOVRAN BANK, N.A. BY its Vice President and Trust Officer, DANNY K. WRENN, AND ITS COUNSEL , THOMAS S. WORD, JR. AND SCOTT S CAIRNS; THE DEFENDANTS, CLARENCE H. HOLDING, BERTHA J. GALE , AND THOMAS R.GALE, ALL APPEARING PRO SE ; AND THE DEFENDANTS, THE TRUSTEES OF ROANOKE COLLEGE, BY THEIR COUNSEL, JOHN W. VAUGHAN, JR., BUT THE DEFENDANT, VIRGINIA MUSEUM OF FINE ARTS, ALTHOUGH PROPERLY NOTIFIED OF THIS HEARING, MADE NO APPEARANCE BY REPRESEN TATIVE OR COUNSEL.

WHEREUPON , THE COURT HEARD THE ARGUMENT OF PL

ANTIFF,S COUNSEL AND OF THE DEFENDANT HOLDING ON THE PLANTIFF,S DEMURRER TO THE DEFENDANT HOLDING,S COUNTER CLAIM AND FOUND , FOR THE RE ASONS STATED IN THE DEMURRER, THAT THE COUNTER CLAIM FAILS TO STATE A CLAIM FOR ABUSE OF PROCE SS; IT IS, THEREFORE, ORDERED THAT THE DEMURRER IS SUSTAINED AND THE COUNTERCLAIM PERTAINING TO ABUSE OF PROCESS IS DISMISSED.

WHEREUPON , THE COURT HEARD THE ARGUMENT OF PL ANTIFF,s MOTION TO FILE AN AMENDED BILL OF COM PLAINT , WHEREIN THE PBANTIFF ALLEGES THE DEFEN DANT HOLDING OBTAINED BLUE BELL FARM FROM THE DE CEASED ORITS DECEDENT BY FRAUD , WHICH MOTION THE COURT TOOK UNDER ADVISEMENT.

WHEREUPON THE PARTIES ABANDONED ALL OTHER OUTST ANDING MOTIONS AND PLEAS AND AGREED TO A BIFUR CATION OF THE CONTROVERSIES BETWEEN THEM CONCER NING BLUE BELL FARM AND MUTUAL FINANCE CORPORA TION , WITH THE HEARING OF THE ISSUES CONCERNI NG THE FORMER BEING CONTINUED GENERALLY AND THE ISSUES CONCERNING THE LATTER BEING HEARD ON JULY 11, 1994.

WHEREUPON, THIS CAUSE CAME ON TO BE HEARD UPON THE ALLEGATIONS AND PRAYER OF THE BILL OF COMPL AINT AND THE EXIBITS THERETO AS TO MUTUAL FINAN CE CORPORATOON;upon the ANSWER OF THE DEFENDANT HOLDING AND THE ALLEGATIONS AND PRAYER OF HIS UNTITLED CROSS_BILL CONTAINED THEREIN;UPON THE ALLEGATIONS AND PRAYER OF THE DEFENDANT HOLDING

COUNTERCLAIM AS TO MUTUAL FINANCE CORPORATION; UPON THE PLANTIFF,S ANSWER TO THE DEFEMDANT HOL DING BLEADINGS; UPON THE ANSWERS OF THE OTHER DE FENDANTS, WHO HAVE JOINED IN THE PRAYER OF THE BILL OF COMPLAINT; AND UPON EVIDENCE HEARD ORE TENUS ON JULY 11 , 1984; and this cause was arg ued by COUNSEL AND BY THE DEFENDANT HOLDING.
ON CONSIDERATION WHEREOF, THE COURT FINDS FROM THE EVIDENCE THAT LILLIAN J. MUSE, a RESIDENT OF THE CITY OF RICHMOND , VIRGINIA, DIED ON AUGUST 13, 1984; HER LAST WILL, DATED JULY 2. 1975, and A CODICIL , DATED AUGUST 6, 1976 , werePROBATED BEFORE THE CLERK OF THIS COURT ON AUGUST 23, 1983, AT WHICH TIME THE PLANTIFF QUALIFIEDAS EXECUTOR AND TRUSTEE OF HER ESTATE; AT THE TIME OF HER DEATH, LILLIAN J. MUSE WAS THE OWNER OF ALL OUT STANDING STOCK OF MUTUAL FINANCE CORPORATION,AND

UNDER HER WILL SHE GAVE THIS STOCK AND HER OW NERSHIP OF THE CORPORATION IN TRUST FOR THE BENEFIT OF THE DEFENDANTS, BERTHA J. GALE AND THOMAS R. GALE , THE TRUSTEES OF ROANOKE COLL EGE AND THE VIRGINIA MUSEUM OF FINE ARTS; AFTER HER DEATH , THE DEFENDANT HOLDING MADE A CLAIM OF OWNERSHIP OF MUTUAL FINANCE CORPORATION BAS ED ON AN ALLEGED ORAL CONTRACT BETWEEN LILLIAN J. MUSE AND HIMSELF, WHEREBY IN RETURN FOR HOL DING,S ADVICE AND CONSUEL TO HER DURING THE PERIOD OF JANUARY 3, 1983 THROUGH DECEMBER 30, 1983, HE WAS TO HAVE OWNERSHIP OF MUTUAL FINANCE CORPORATION in CASE OF HER DEATH DURING THE TERM OF THE CONTRACT ; LILLIAN J. MUSE DIED DURING THE TERM OF THE ALLEGED CONTRACT; AND NO CONDITIONAL ASSIGNMENT OR CONVEYANCE OF THE STOCK WAS EVER MADE TO THE DEFENDANT HOLDING, NOR DID THE WILL OF LILLIAN J. MUSE GIVE HIM ANY RIGHTS TO MUTUAL FINANCE CORPORATION.

ON FURTHER CONSIDERATION OF THE EVIDENCE, THE COURT FINDS THAT THE DEFENDANT HOLDING FAILED TO TESTIFY, EVEN THOUGH HE WAS INVITED TO DO SO BY THE COURT AND FULLY ADVISED THAT HIS TESTIMONY DURING DISCOVERY DEPOSITIONS WOULD NOT BE CONSID

ERED AS EVIDENCE WITH THE EXCEPTION OF HIS AD MISSIONS AGAINST INTEREST, WHICH WERE INTRODUCED BY THE PLANTIFF;HIS EVIDENCE IS LIMITED TO COPIES OF CORPORATION RECORDS AND THE DEPOSITIONS OF TWO WITNESSES ; THE RECORD FAILS TO EVIDENCE ANY SUCH CONTRACT, AND THE TESTIMONY OF THE DEPONENTS WAS THAT THE DEFENDANT HOLDING HAD TOLD THEM OF HIS CONTRACT WITH LILLIAN J. MUSE BEFORE HER DEATH; HOLDING,S ADMISSIONS WERE THAT HE WA NOT AWARE OF ANY WITNESSES TO HIS ALLEGED ORAL AGREEMENT WITH LILLIAN J. MUSE AND THAT THERE WERE NO DOC_ UMENTS EVIDENCING THE CONTRACT; NAD THE BEFENDANT HOLDING HAS FAILED TO SATISFY THE BURDEN UPON HIM TO PRODUCE CLEAR AND CONVINCING PROOF OF A CONTRACT TO MAKE A WILL AS REQUIRED UNDER BLINCOE V. BLINCOE , 209 VA 238 (1968) and HAS NOT FURN ISHED THE CORROBORATION REQUIRED UNDER VIRGINIA CODE SECTION 8.01-397.

THEREFORE,IT IS DECLARED BY THE COURT THAT THE DEFENDANT, CLARENCE H. HOLDING , HAS NO OWNER SHIP IN OR RIGHTS TO MUTUAL FINANCE CORPORATION, AND IT IS ADJUDGED , ORDERED AND DECREED THAT THE OWNERSHIP AND ALL OUTSTANDING STOCK OF MUTUAL FINANCE CORPORATION ARE THE PROPERTY OF THE EST

ATE OF LILLIAN J. MUSE AND ARE VESTED TO THE PL ANTIFF AS EXECUTOR AND TRUSTEE OF HER ESTATE FOR THE BENEFIT OF THE DEFENDANTS, BERTHA J. GALE , TH THOMAS R.GALE , THE TRUSTEES OF ROANOKE COLLEGE AND THE VIRGINIA MUSEUM OF FINE ARTS;AND THAT THE DEFENDANT HOLDING FORTHWITH DELIVER TO THE PLANTIFF ANY AND ALL ASSETS OF MUTUAL FINANCE CORPORATION IN HIS POSSESSION OR UNDER HIS CONTROL.

THIS IS A FINAL DECREE AS TO ALL CONTROVERSIES BETWEEN THE PARTIES CONCERNING THE OWNERSHIP OF MUTUAL FINANCE CORPORATION, BUT THIS CAUSE IS RE TAINED ON THE PENDING DOCKET FOR HEARING OF THE CONTROVERSIES BETWEEN THE PARTIES AS TO BLUE BELL FARM. THE CLERK SHALL MAIL AN ATTESTED COPY OF THIS DECREE TO ALL PARTIES OR THEIR COUNSEL OF RECORD.

A COPY

TESTE: IVA R. PURDY, CLERK

BY: FANNY J. TAYLOR

DEPUTY CLERK

V I R G I N I A # 841593

EXIBIT 8
REC,D CLK OF
SUPREME COURT10/23/
84
Signed

IN THE SUPREME COURT

CLARENCE H. HOLDING, APPELLANT

V.

SOVRAN BANK , AS EXECUTOR AND TRUSTEE OF ESTATE OF LILLIAN J. MUSE, DECEASED, APPELLEE

PETITION FOR APPEAL
ASSIGNMENT OF ERRORS

PURSUANT TO RULE 5:21 OF THE SUPREME COURT OF VIRGINIA YOUR APPELLANT , CLARENCE H. HOLDING PRESENTS THIS PETITION OF APPEAL AND ASSIGNMENT OF ERRORS AS IS HEREBY SETFORTH. FURTHER FOR GOOD CAUSE AND TO ENABLE THIS COURT TO ATTAIN THE ENDS OF JUSTICE EXCEPTIONS TO THE RULE IS USE D. CLARENCE H. HOLDING PRAYS FOR RELIEF FROM AN ORDER DATED JULY 23 , 1984 and all other ORDERS SUSEQUENT THEREIN AND TO GRANT A PETITION TO REVERSE THE SAME . CASES APPLICABLE TO AND IN SUPPORT OF ARE : WITT V. NORRICKS 210 VA. 70, 168 SE 2 d 517 (1969). REQUIREMENTS ARE NOT INFLEXIBLE AND MAY BE RELAXED TO ENABLE THE SUPREME COURT TO ATTAIN THE ENDS OF JUSTICE. SHOCKET V SIBERMAN 209 Va 490,165 SE 2d214 (1969).VIOLATED DUE PROCESS OF 14th AMENDMENT U. S. CONSTITUTION. UNABLE TO GET A FAIR TRIAL.

PURSUANT TO THE STATED REASONS AND AUTHORITY ST ATED ABOVE AND FOR GOOD REASONS AND CAUSE SHOWN AND TO ENABLE THIS COURT TO ATTAIN THE ENDS OF OF JUSTICE THE ASSIGNMENT ERRORS ARE AS FOLLOWS:

ERROR 1. THERE IS AND WAS ABUSE OF DISCRETIONERY POWER OF THE TRIAL JUDGE.

ERROR 2. THERE WAS ABUSE OF DEFENDANT COUNSEL ACTING FOR SELF.

ERROR 3. DEFENDANT ACTING AS OWN COUNSEL WAS NOT PERMITTED TO PRESENT HIS CASE IN AN ORD ERLY WAY AND WAS INTIMIDATED AND THREATENED BY THE TRIAL JUDGE .

ERROR 4. MOTIONS AND PLEADINGS OF THE DEFENDANT COUNSEL ACTING FOR SELF WENT UNNOTICED.

ERROR 5. PLEADINGS AND MOTIONS OF COMPLAINANT WERE RUBBER STAMPED.

ERROR 6. TRIAL BY JURY WAS DENIED ALTHOUGH RE QUESTED SEVERAL TIMES .

ERROR 7. JUDGE SAYING NO CONTRACT EXISTED WHEN EVIDENCED A CONTRACT EXISTED FOR 12 YEARS CONTINUED AND RENEWED EACH YEAR.

ERROR 8. WHAT THE DEFENDANT AS COUNSEL SAID OR DONE MADE LITTLE OR NO DIFFERENCE OR EFFECT ON THE CASE.

ERROR 9. WITH 12 YEARS OF PROFESSIONAL SERVICES . PERFORMED BY THE DEFENDANT THE EXECUTOR IS ESTOPPED BY THE DOCTRINE OF LATCHES TO DENY AND NOT FULFILL THE CONTRACT WH ich WERE RELIED UPON BY BOTH PARTIES AND DECEASED BENEFITTED GREATLY BY 5 TIM ES INCREASE IN VALUE AND 5 TIMES INCREASE IN INCOME .

ERROR 10. EXECUTER IS ESTOPPED TO DENY THE EXIST ENCE OF A CONTRACT WHEN THE RECORDS, BO OKS, JOURNALS AND FILINGS WITH THE STATE CORPORATION PROVE OTHERWISE .

ERROR 11. TRIAL JUDGE ERRORED NOT GRANTING A REH EARING OF THE CASE.

ERROR 13 TRIAL JUDGE ERRORED IN NOT VACATING THE ORDER KNOWING THERE WAS NEW EVIDENCE TO BE SUBMITTED AND TESTIMONY.

ERROR 14. UNABLE TO GET A FAIR TRIAL

ERROR 15. TRIAL JUDGE ERRORED NOT ALLOWING THE DEPOSITIONS OF TWO WITNESSES OF DEFEND ANT .

ERROR 16. ERROR VIOLATION OF DUE PORCESS OF 14th AMENDMENT OF U.S. CONSTITUTION AND STATE.

WHEREFORE, FOR GOOD CAUSE AND TO ENABLE THE COURT TO ATTAIN THE ENDS OF JUSTICE , YOUR APPELLANT ASK THE COURT HONOR HID PETITION AND APPEAL AND PRAYS FOR RELIEF FROM THE LOWER COURT ORDERS OF JULY 23, 1984 and REVERSE THE SAME WITH JUDGMENT AND COSTS FOR THE DEFENDANT SO JUSTICE CAN AND MAY BE DONE .

THIS DAY OCTOBER 22,1984 RESPECTFULLY SUBMITTED,

CLARENCE H. HOLDING
1901 WOODBINE ROAD
RICHMOND, VA. 23225

CLARENCE H. HOLDING
COUNSEL FOR APPELLANT

CERTIFICATE

UNDER RULE 5:22 (a) APPELLANT-CLARENCE H. HOLDING 1901WOODBINE RD. RICHMOND 23225. 804 232 7418 APPELLEE_ SOVRAN BANK , EXECUTOR AND TRUSTEE OF ESTATE OF LILLIAN J. MUSE, DECEASED. THOMAS S. WORD , JR. , COUNSELFOR APPELLEE 1400 Ross BLDG. RICHMOND, VA. 23219.804 644-4131

DEFENDANTS COUNSEL , CLARENCE H. HOLDING DESIRES TO STATE ORALLY THE REASONS FOR GRANTING PETITION

COPY OF PETITION MAILED TO ALL PARTIES 10/22/84.

SIGNED
CLARENCE H. HOLDING
COUNSEL FOR APPELLANT

CERTIFICATE

I CERTIFY A COPY OF ABOVE APPEAL WAS SENT POSTAGE PAID TO COUNSLE OF APPELLEESTHOMAS S. WORD JR. 1400 ROSS BLDG, RICHMOND , VA 23219 10/22/84.

SIGNED
CLARENCE H. HOLDING

EXIBIT (9)

CERTIFICATE

I, CLARENCE H. HOLDING, THE UNDERSIGNED DOTH CERTIFY THE PETITION FOR WRIT OF CERTIORARI IS A TRUE COPY WITH THE ADDITIONS AND ARRANGEMENTS REQUESTED BY THE CLERK OF SUPREME COURT OF THE UNITED STATES . ALSO A COPY IS HEREBY SENT TO THE COUNSEL FOR THE APPELLEE, SCOTT S CAIRNS , THOMAS S WORD , JR. AT 1400 ROSS BUILDING RICHMOND , VIRGINIA 23219. POSTED PAID .

Clarence H. Holding

CLARENCE H. HOLDING

COUNSEL FOR THE PETITIONER

Witnessed the above signature this 1st day of May , 1985.

Violet L. James My Commission Expires March 10, 1989

Notary Public

Supreme Court, U.S.
FILED
JUN 3 1985
ALEXANDER L. STEVAS
CLERK

NO. 84-1720

IN THE

Supreme Court of the United States

October Term, 1985

CLARENCE H. HOLDING,

Petitioner,

v.

SOVRAN BANK, EXECUTOR AND TRUSTEE UNDER THE WILL OF LILLIAN J. MUSE, DECEASED,

Respondent.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Virginia

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Question Presented for Review

Should this Court review the Supreme Court of Virginia's denial of Petitioner's petition for appeal where Petitioner failed to comply with the Virginia statute and Rule of Court requiring payment of a $25 filing fee at the time a petition for appeal is filed and where Petitioner makes no claim of good cause for his failure to pay such fee,

and

Where the decision of the Supreme Court of Virginia was based solely on adequate state grounds and no federal question was presented?

Parties to the Proceeding

Petitioner in this Court and defendant/ appellant below
.....Clarence H. Holding

Respondent in this Court and plaintiff/ appellee below
.....Sovran Bank, N.A., as Executor and Trustee under the Will of Lillian J. Muse, Deceased[1]

Other defendants in the lower court, not parties to Petitioner's petition for appeal in the Supreme Court of Virginia or to this action
.....Thomas R. Gale
Bertha J. Gale
The Trustees of Roanoke College
The Virginia Museum of Fine Arts

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[1]Sovran Bank, N.A., is a wholly-owned subsidiary of Sovran Financial Corporation. Other than wholly-owned subsidiaries of Sovran Financial Corporation, neither Sovran Financial Corporation nor Sovran Bank, N.A. has any subsidiaries or affiliates.

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Opinion Delivered in the Court Below

The January 18, 1984 Order of the Supreme Court of Virginia, of which Petitioner seeks review, is attached to Petitioner's brief as Exhibit 6, page 18. The Order of the Supreme Court of Virginia denying Petitioner's petition for appeal is attached as Exhibit 3, page 11, to Petitioner's brief.

The Circuit Court's opinion of July 23, 1984 is attached as Exhibit 7, pages 19 through 24, to Petitioner's brief.

Grounds on Which the Jurisdiction of this Court is Invoked

Respondent denies that this Court has jurisdiction because Petitioner's Petition for Writ of Certiorari contains no allegations sufficient to support jurisdiction under Rule 17 of the Rules of this Court, nor does the Petition make any allegation that calls into question the constitutionality of a state statute. See 28 U.S.C. 1257(3).

Statutes Involved

The Petitioner's Petition for Appeal was denied for violation of Rule 5:25 of the Rules of the Supreme Court of Virginia, which provides:

> The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount required by statute.

The statute which sets out the fee is Virginia Code § 14.1-120 which provides in pertinent part:

> The Clerk of the Supreme Court shall charge the following fees:
>
> In every case in which a petition is presented twenty-five dollars, which shall be collected at the time such petition is presented.

No. 84-1720

In The
Supreme Court of the United States
October Term, 1985

Clarence H. Holding,

Petitioner,

v.

Sovran Bank, Executor and Trustee Under the Will of Lillian J. Muse, Deceased,

Respondent.

Brief in Opposition to
Petition for Writ of Certiorari
To the Supreme Court of Virginia

Statement of the Case

Sovran Bank, N.A. ("Sovran"), is the executor and trustee under the will of Lillian J. Muse, who died on August 13, 1983. At the time this action

began, Sovran was known as First & Merchants National Bank.

Sovran filed this action on behalf of the estate of Lillian Muse on December 16, 1984, in the Circuit Court for the City of Richmond, seeking a declaratory judgment concerning claims made by Petitioner, Clarence H. Holding ("Mr. Holding") to a corporation owned by Mrs. Muse known as Mutual Finance Corporation.

At trial on July 11, 1983, Mr. Holding chose not to testify in support of his claims. After a bench ruling for Sovran, on July 23, 1984 the Circuit Court issued a written opinion[2] that Holding had no evidence in support of

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[2]Exhibit 7 to the Petition for Writ of Certiorari.

his claims to Mutual Finance Corporation and decreed that the corporation was part of Mrs. Muse's estate.

On October 22, 1984, Mr. Holding filed a petition for appeal with the Supreme Court of Virginia. On December 6, 1984, the Supreme Court of Virginia dismissed the petition for appeal for failure to comply with Rule 5:25 of the Rules of the Supreme Court of Virginia, which requires that a $25 filing fee be paid at the time a petition for appeal is filed.

Holding sought a rehearing on his petition.[3] On January 18, 1985, the

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[3]Virginia Code § 675.1 permits a party whose petition is dismissed for failure to pay the writ tax to file a motion, after notice to opposing counsel, for the dismissal to be set

(Footnote Continued)

Supreme Court of Virginia denied his request.

Reasons for Denying the Petition

This is an ordinary case of a litigant failing to comply with a court's procedure. There are no issues in this action that meet the requirements of Rule 17 or of 28 U.S.C. § 1257(3). There are no special or important reasons for this Court to exercise its discretion and grant Mr. Holding's Petition.

(Footnote Continued)
aside "for good cause shown." Mr. Holding filed no such motion but instead requested a rehearing, as allowed by Virginia Code § 675.2.

A. The Supreme Court of Virginia Correctly Found that Mr. Holding had not Complied with its Rules in Filing his Petition for Appeal.

As shown by the exhibits to Mr. Holding's Petition for Writ of Certiorari, Mr. Holding filed his petition for appeal in the Virginia Supreme Court on the last day of the three month period allowed for filing an appeal. See Rule 5:24 of the Rules of the Supreme Court of Virginia. He did not include payment of his filing fee as required by Rule 5:25 which states: "The petition must be accompanied by a check or money order payable to the clerk of this Court for the amount required by statute." The statute, Virginia Code § 14.1-120, requires payment of $25 to initiate a petition for appeal.

The Virginia Supreme Court dismissed Mr. Holding's petition for appeal for failure to comply with these rules. In his request for rehearing, Mr. Holding made no claim that he was unable to pay the $25 fee. In fact, he then enclosed the $25 fee. His only explanation for his failure to comply with the rules was that he "forgot". See Exhibit 5 to the Petition, page 13.

In Green v. Elbert, 137 U.S. 615, 621 (1891), this Court stated:

> To the proper conduct of business of this court, rules are necessary, and, having been prescribed, reasonable compliance with them is expected and must be insisted upon. When they are disregarded, dispensation from the circumstances can be only extended when the circumstances furnish adequate excuse, were this otherwise, our regulations might become more honored in the breach than the observance, and the recognition of due procedure

would be seriously weakened and impaired.

Just as this Court has rules that must be followed, so does the Supreme Court of Virginia. That court properly dismissed Mr. Holding's petition for appeal for failure to comply with those rules.

B. Virginia's $25 Filing Fee And Its Applicability To This Action Are Not Unconstitutional.

Mr. Holding's Petition to this Court failed to explain how he believes his constitutional rights have been denied other than claiming that the Supreme Court of Virginia violated the 13th and 14th Amendments to the Constitution by rejecting his appeal. He gave no argument or case authority in support

of his position. See Petition for Writ of Certiorari, pages 5 and 6.[4]

However, it is clear that neither Rule 5:25 nor Virginia Code § 14.1-120 is unconstitutional. The right to have a decision reviewed is not an absolute right in Virginia, but is subject to such conditions as the legislature may put upon it. Town of Falls Church v.

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[4]Since Mr. Holding has presented no special circumstances making application of Rule 5:25 to his case unconstitutional, it must be assumed that he is claiming that the Rule itself is unconstitutional. If so, Mr. Holding has again ignored a rule of court. Rule 28.4(c) of the Supreme Court Rules requires that in any proceeding wherein the constitutionality of a state statute is drawn in question, but where the state is not a party, the petition shall recite that 28 U.S.C. § 2403(b) may be applicable and shall be served upon the Attorney General of the state. There is no indication in Mr. Holding's Petition that any such service was made.

County Bd., 166 Va. 192, 184 S.E.2d 459 (1936). Moreover, under both federal and state law:

> The right of appeal is no part of due process of law. All that a litigant can ask is that in some appropriate way, before some duly constituted tribunal, its compensation shall be determined. Backus v. Port Street Union Depot Co., 169 U.S. 557 (1898). . . .

Rudacille v. State Commission, 155 Va. 808, 817, 156 S.E. 829 (1931). Mr. Holding had the opportunity to present his claims in the Circuit Court. As Mr. Holding had no right to an appeal except in the discretion of the Supreme Court of Virginia, he can claim no constitutional deprivation in that court's decision to deny his petition.[5]

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[5]Even if Mr. Holding did have a
(Footnote Continued)

Moreover, this rule is no different from any other rule of court or statute designed to establish a procedure for filing claims or appeals. It is no different than the requirement that this brief in opposition to Mr. Holding's Petition be filed within thirty days of service of his Petition.[6]

(Footnote Continued)
"right" to appeal the Circuit Court's decision, a restraint on access to that appeal would be invalidated only if it were so arbitrary, unequal, and oppressive as to shock the fairness the 14th Amendment was intended to satisfy. See Chicago & N. R. Co. v. Nye Schneider Fowler Co., 260 U.S. 35 (1922). Clearly, a $25 filing fee does not meet this heavy burden.

[6]Nor is it any different than any other statute of limitations, the constitutionality of which are routinely upheld. See, e.g., G. D. Searle U. Co. v. Cohn, 455 U.S. 404, 408 (1982) (upholding constitutionality of New Jersey's statute of limitations); Jewson v. Mayo Clinic, 691 F.2d 405, 411 (8th

(Footnote Continued)

Conclusion

There is no reason for this Court to review the Supreme Court of Virginia's refusal to grant Mr. Holding's petition for appeal. The decision of the Virginia Supreme Court is founded solely on adequate state grounds, and the decision does not deny Mr. Holding any constitutional rights. Therefore, the Petition for Writ of Certiorari to review the decision of the Virginia Supreme Court should be denied.

(Footnote Continued)
Cir. 1982) (upholding the Minnesota statute of limitations).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three true and exact copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Virginia were mailed, postage prepaid, this 31st day of May, 1985, to Clarence H. Holding, 1901 Woodbine Road, Richmond, Virginia 23225.